



**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**CERTIFICATE OF MAILING UNDER 37 CFR 1.8**

I hereby certify that this correspondence is being deposited with the U.S. Postal Service on May 24, 2005, with sufficient postage as first class mail (including Express Mail per MPEP § 512), and addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

  
Kelly K. Burris, Registration No. 46,361

Application No.: 10/719,327  
Filing Date: 11/21/2003  
Applicants: Kenneth F. Fennewald et al.  
Group Art Unit: 3742  
Examiner: Leonid M. Fastovsky  
Title: TWO-WIRE LAYERED HEATER SYSTEM  
Attorney Docket: 7377-000005

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Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

**PETITION UNDER 37 C.F.R. § 1.181**

In response to a Final Office Action received in the subject patent application, Applicants hereby petition for a decision that the status of "Final" is premature, in accordance with MPEP § 706.07(c). In light of the statements and remarks set forth below, Applicants respectfully request that the Office Action be changed to a Non-Final status. In support thereof, Applicants state as follows:

**EV-639016175 US**

1. On September 9, 2004, a first Office Action was issued on the merits. (See Exhibit A).

2. On November 12, 2004, Applicants filed a response, presenting arguments without any claim amendments, to successfully overcome rejections presented by the first Office Action. (See Exhibit B).

3. On February 12, 2005, a second Office Action was issued on the merits, with new grounds of rejection and newly cited prior art. (See Exhibit C).

4. On July 7, 2005, Applicants filed a response to the second Office Action, including an interview summary from an on-site visit with the Examiner on June 14, 2005, wherein the two (2) remaining independent claims were amended to successfully overcome rejections presented by the Examiner during the on-site interview. (See Exhibit D).

5. On September 30, 2005, a third Office Action was issued on the merits, with new grounds of rejection based on another set of newly cited prior art. (See Exhibit E).

6. On December 30, 2005, Applicants filed a response to the third Office Action, without any claim amendments, to successfully overcome the rejections therein. (See Exhibit F).

7. On February 24, 2006, the subject Final Office Action was issued, with, again, new grounds of rejection based on yet another set of newly cited prior art. (See Exhibit G).

8. The February 24, 2006 final Office Action states "Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action."

However, the claims were not amended in the December 30, 2005 response and thus there was no amendment that necessitated the new grounds of rejection.

Under 37 C.F.R. § 1.113, a rejection may be made final: " ... whereupon applicant's, or for ex parte reexaminations filed under § 1.510, patent owner's reply is limited to appeal in the case of rejection of any claim (§ 41.31 of this title), or to amendment as specified in § 1.114 or § 1.116."

The December 30, 2005 reply was not limited to appeal and was not an amendment under § 1.114 or § 1.116. Instead, the December 30, 2005 reply presented arguments that in fact overcame the outstanding claim rejections. Therefore, Applicants submit that the Outstanding Office Action cannot be made final. Furthermore, the claim amendments filed on July 7, 2005 cannot be presented as necessitating the new grounds of rejection since these claim amendments overcame the rejections in the previous Office Action/on-site interview. If the amendments filed on July 7, 2005 necessitated new grounds, then the September 30, 2005 Office Action would have been final. As set forth above, the September 30, 2005 Office Action was non-final.

The subject Final Office Action contains the third set of new grounds of rejection and newly cited prior art. Having overcome all previous claim rejections, Applicants have not previously had an opportunity to argue these new grounds and therefore submit that the Outstanding "Final" Office Action is premature. As MPEP §706.07 states "...present practice does not sanction hasty and ill-considered final rejections. The applicant who is seeking to define his or her invention in claims that will give him or her the patent protection to which he or she is justly entitled should receive the

cooperation of the examiner to that end, and not be prematurely cut off in the prosecution of his or her application."

In view of the above, Applicants respectfully request that the status of the outstanding Office Action be changed from Final to Non-Final.

Applicant believes there are no fees due in connection with the filing of this Petition. However, should there be fees due, the Commissioner is authorized to charge any necessary fees to our Deposit Account No. 08-0750.

Respectfully submitted,

Dated: 24 MAY 06

By: Kelly K. Burris  
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